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Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo

Addendum

Mission to Bahamas: comments by the government to the Unedited report of the Special Rapporteur*

* Reproduced as received

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Report on Trafficking in Persons of the UN Special Rapporteur, Ms. Joy Ngozi Ezeilo

1. The Government of The Bahamas is pleased to provide comments to the report prepared on the visit to The Bahamas, from December 9-11, 2013, of Ms. Joy Ngozi Ezeilo, Special Rapporteur on Trafficking in Persons, Especially Women and Children, United Nations Office of the High Commissioner for Human Rights. The purpose of the visit was to examine the situation of human trafficking and to engage with representatives of the Government and civil society organizations, to discuss achievements and challenges in combating and preventing trafficking in persons.

2. The comments to the Report relate to inaccuracies in fact or law that should be carefully considered prior to its submission for editing in accordance with the United Nations documentation requirements.

3. The Government would wish to have its comments circulated as an addendum to the report; however, the comments at paragraphs highlighted below can be incorporated into the report:

I. Introduction

Paragraph 2:

4. **Line1:** The word 'Free-port' is spelt 'Freeport'.

5. **Line 6:** The word 'Inter-ministerial' should be 'Inter-Ministry'.

6. **Lines 6 – 8 should read:** She further held meetings with the Inter-Ministry Committee on Trafficking in Persons, the coordinating body for policy matters relating to trafficking in persons and the National Trafficking in Persons Task Force, the operational body for providing assistance to victims and ensuring coordination between Government agencies and NGOs on trafficking in person's matters.

II. Main findings

A. Forms and manifestations of trafficking in persons

Paragraph 4

7. **Line 4:** Capitalize the letter 'T' preceding 'Bahamas'. Wherever the word 'the' is used before 'Bahamas' the letter 't' is to be capitalized.

8. Change the word 'are' to 'is'.

9. Line 4 should read: The Bahamas is .....

10. It is accepted that the geography of The Bahamas makes the country a major route for illegal migration, and places it in a position to be used as a transit and destination point for the trafficking of men, women, and children subjected to forced labour and sex trafficking. However, over the past two years, The Bahamas has made significant efforts to bring itself in compliance with acceptable standards as exhibited by the United States 2013 Annual Trafficking in Persons Report in which The Bahamas was elevated from a Tier 2 Watch List to Tier 2.

11. With respect to the women from the Dominican Republic, who were interviewed by the Special Rapporteur, the report on the matter from the Immigration Department indicated that a joint operation was carried out by law enforcement (Immigration and Police) on a house in Grand Bahama where Dominicans were found. There was, however, no evidence that law enforcement found these persons abandoned and blind folded in the house a few days after arrival. The persons were also in possession of their passports and personal belongings. The report indicated the matter to be smuggling and not trafficking in persons.

Paragraph 5

12. Until recent times, the Government's focus was not on trafficking in persons, as major attention had to be given to the age old, immense problem of human smuggling. The thousands of migrants, who are smuggled into The Bahamas regularly from Haiti, make it almost impractical for the authorities to properly identify persons who may be trafficked among smuggled persons. The first line officers receive training in the identification of victims of trafficking; and, there are protocols in place to assist with identification.

13. The form of trafficking in persons identified in The Bahamas is for sexual and labour exploitation. Migrant workers are especially vulnerable to being trafficked, particularly among the Haitian population who arrive in The Bahamas, largely voluntarily, to work as domestic employees, labourers, and in agriculture. The other large, vulnerable migrant worker communities are from China, Jamaica and the Philippines. The groups especially vulnerable to sex trafficking in The Bahamas include foreign persons, many of whom are involved in prostitution or exotic dancing, and women.

14. Over the past two years, a number of separate incidences was investigated during operations conducted by law enforcement officers from the Department of immigration and the Royal Bahamas Police Force, at different times. Of the many persons who were interviewed, it was determined that there was no evidence that they were victims of sex or labour trafficking or any other form of trafficking. There were no suspected traffickers. They were all illegal migrants.

Paragraph 6

15. The situation described in this paragraph typifies the literature on what can happen in a trafficking in persons situation. The Bahamas takes a victim-centred approach in dealing with trafficking in persons, as is promoted by the international organizations, which is focussed on the protection of the victim, regardless of nationality.

16. It is recognized by the Bahamian authorities that persons trafficked may not want to reach out to them due to their perceived status as illegal migrants; however, potential trafficked persons in The Bahamas are viewed as victims of crime rather than as criminals. This is seen as an important step in uncovering the trafficking networks and bringing the perpetrators to justice. The provision is also in place for victims to be

17. given temporary residency status that will enable them to obtain employment.

18. The rescued victims from Jamaica, interviewed by the Special Rapporteur, were trafficked by Jamaicans concerned with Bahamians, who recruited them from their communities of origin in Jamaica.

19. As indicated at paragraph 5 above, the smuggling of Haitians into The Bahamas is an age old problem. They enter the country by boat, and through their employment situations, may become vulnerable to labour trafficking. Dominicans are included in a new trend of migrants that are being smuggled into the country and are vulnerable to situations of trafficking in persons. They arrive in the Bahamas mainly by air.

Paragraph 7

20. **Line 12:** Change the word 'drawn' to 'drown'.

21. The terms of the visit of the Special Rapporteur to The Bahamas was to examine the situation of trafficking in persons from a human rights approach. At paragraph 5 of the report, it is indicated that in The Bahamas there is little understanding of the difference between trafficking in persons and migrant smuggling. This paragraph (para. 7) however, details what happens during human smuggling operations rather than trafficking in persons.

22. Additionally, although some of the thousands of Haitians who are smuggled into The Bahamas on over-crowded, unseaworthy vessels may be lured to come; based upon interviews with these persons, the vast majority of them arrive of their own volition, as they believe that they can find a better life economically in The Bahamas. Upon arrival, they are very quickly immersed into the legal and illegal Haitian communities, which are strong. It becomes a revolving door, since as soon as these migrants are repatriated to their country, they return at the earliest opportunity; and no amount of persuasion by the local authorities can dissuade them from making the risky voyage.

Paragraph 8

23. This paragraph is contradictory as it states both that "the absence of available data makes it hard to assess the phenomenon of domestic servitude in the country ...."; and, "undocumented migrants from Haiti are known to constitute the largest share of domestic workers.....".

24. It will be noted that statistics provided by the Department of Immigration do not support the assertion that on the Island of Grand Bahama, persons of Haitian origin largely outnumber the Bahamian nationals.

25. This paragraph makes reference to "stateless Bahamian of Haitian decent". It is to be noted that there are no "stateless" Bahamians. Persons of Haitian decent born in The Bahamas with neither parents as citizens, adopt the nationality of their parents and can obtain Haitian passports.

Paragraph 9

26. The 2001 National Employment Act does provide for the protection of domestic workers; however, the Act does not provide for overtime compensation for those domestic workers that are live-in-housekeepers. All other basic benefits such as, severance, vacation and notice payments are covered under the Act.

Paragraph 10

27. The case indicated by the Ministry of Social Services and Community Development of the minor Haitian child was investigated by the police and, in consultation with prosecutors in the Specialized Trafficking in Persons Unit in the Office of the Attorney General and Ministry of Legal Affairs, was determined not to be a Trafficking in Persons case.

28. With respect to the discussions held by the Special Rapporteur with civil society interlocutors, it is to be noted that there were no government officials present. It is also to be noted that the Government has neither evidence nor report to identify child sex tourism as a problem in The Bahamas.

Paragraph 11

29. Bahamian nationals are willing to engage in domestic jobs, but are seldom willing to be engaged as domestic live-in workers.

B. Legal, policy and institutional frameworks for combating trafficking in persons

1. Legal Framework

International and Regional Framework

Paragraph 12

30. The Government is currently reviewing the "International Convention on the Protection of all Migrant Workers and Members of their Families as well as the Domestic Workers Convention (ILO 189)".

Paragraph 13

31. The Government of The Bahamas does have established protocols for dealing with asylum seekers and refugees. The Unit within the Department of Immigration with specific responsibility for these categories of migrants works closely with the Office of the Attorney General and Ministry of Legal Affairs on matters that require judicial remedies.

32. The Constitution of the Commonwealth of The Bahamas provides for persons of foreign parents born in The Bahamas, including undocumented Haitian migrants, to apply for citizenship when they reach the age of 18 years. With respect to children born of undocumented Haitian migrants, they are not at risk for statelessness as they adopt the nationality of their parents and can obtain Haitian passports.

National Framework

Paragraph 20

33. **Line 2:** The 2001 Employment Act does not set 'limitation of working hours'; however, where an employee works in excess of the Standard hours of work (Section 8 (1) of the Employment Act) they are to be compensated overtime in accordance with the Act. As it relates to 'inspectors not being able to inspect homes', this is the International Standard and is not unique to The Bahamas.

Immigration Policy

Paragraph 22

34. At the time of the UN Special Rapporteur's visit, the Detention Centre had a capacity to hold 200 detainees and had a total of 133. There were three (3) dormitories with two additional dormitories in the final stage of construction. Each dormitory had a capacity to hold 70 persons with a sanitary room containing facilities for use by four (4) detainees at a time.

35. Additionally, at the time of the Special Rapporteur's visit, the Government was in the process of a repatriation exercise, therefore, all of the migrants earmarked for repatriation had been processed and temporarily detained for two to three (2-3) hours in a specific dormitory awaiting removal for repatriation.

Paragraph 23

36. **Line 5:** The statistics provided by the Department of Immigration does not indicate that the majority of persons entering The Bahamas are Haitian children under the age of 18.

Paragraph 25

37. As indicated at paragraph 4, the report from the Immigration Department indicated that a joint operation was carried out by law enforcement (Immigration and the Police) on a house in Grand Bahama where Dominicans were found; however, there is no evidence that law enforcement found them abandoned and blind folded in the house.

Institutional Framework

Paragraph 31

38. **Lines 7–11:** It is comprised of senior Government officials from the Ministries of National Security, Labour and National Insurance, Social Services and Community Development and Health

Paragraph 32

39. **Lines 4–9:** Similar to the TIP Committee Labour and National Insurance, Social Services and Community Development.....

C. Identification of trafficked persons

40. The information provided by the Department of Immigration in The Bahamas does not support the statistics from the IOM that a large majority of persons smuggled into The Bahamas are minors.

Paragraph 41

41. There is no evidence that action was taken by the Special Rapporteur during her visit to ascertain the veracity of the allegations referred to as "alarming alleged practices".

42. At the time of the visit of the Special Rapporteur, no government official had been investigated, prosecuted and/or convicted for involvement in migrant smuggling operations.

Paragraph 42

43. The suggestion in this paragraph that social workers should be on "immigration raids and marine border control operations". appear not to take account of how governments operate. In The Bahamas, Social Workers are not permitted to participate in matters such as raids or marine border control operations involving national security. Unless there are changes, law enforcement officers will continue to be first line workers in these situations in identifying trafficking victims.

Paragraph 44

44. **Lines 1–3:** The Trafficking in Persons Investigation Section and not the Victim Care Unit of Central Detective Unit is mandated to provide assistance for the immediate removal of victims from the environment of exploitation and transfer them to a safe location.

Paragraph 45

45. **Lines 1–2:** In accordance with the TIPA Section 20 (1), the Minister responsible for National Security in conjunction with the Minister responsible for Social Services shall develop a plan in consultation with non-governmental organizations and other representatives of civil society for the provision of appropriate services from governmental and non-governmental sources for victims of trafficking and dependent children accompanying the victims.

Paragraph 46

46. At the time of the visit of the Special Rapporteur, the victims were housed in long-term housing facilities provided by the Government of The Bahamas pursuant to the TIPA Section 12 (2) and the Plan to Provide Assistance to Victims of Trafficking in Persons and their Dependent Children (Trafficking in Persons Assistance Plan. The NGOs mentioned such as the Links Safe House are only used to provide short-term shelter for potential victims. As the shelter provided by the Links Safe House includes families with children, their policy is to assist with safe housing for victims of labour trafficking and not sex trafficking.

47. There was no attempt by the Special Rapporteur to visit safe houses other than the one visited, and this was due primarily to time constraints.

Paragraph 47

48. The dedicated housing provided by the Government of The Bahamas for victims of trafficking in persons is not based on an ad hoc system, but is provided as outlined in the Government's Trafficking in Persons Assistance Plan document. It is to be noted that the Links Safe House provides 24 hour supervision at its facility; and, that victims of trafficking in persons receive counselling from the Government run Sandilands Rehabilitation Centre and the Crisis Centre.

49. The Government of The Bahamas provided two of the victims of trafficking in persons with Refugee Certificates that enable them to seek legal employment while in a temporary residency status. If it is determined that victims would be resident in The Bahamas for a longer period of time, then they will be issued with a Work Permit, without charge, which is renewable annually.

50. All of the necessities of the trafficking in persons victims are provided for by the Government of The Bahamas.

Paragraph 48

51. The Department of Social Services assisted three Jamaican females, who were trafficked, and two Dominicans who were potential victims but were not determined to be victims of trafficking.

52. The IOM provided support in repatriating two victims.

Paragraph 49

53. The temporary residency permit provided for in the TIPA is not contingent on victims cooperation in judicial proceedings.

Paragraph 51

54. The Royal Bahamas Police Force is responsible for investigating TIP cases. There is an established unit at the Central Detective Unit to investigate these types of cases.

There is a Sexual Offences Unit at Central Detective Unit that is responsible for investigation cases of sexual assault. However, the officers assigned to TIP cases are experienced in the investigation of sexual crimes and other major crimes.

Paragraph 54

55. **Line 1:** The offences of trafficking are triable before the Supreme Court and the Magistrates Court.

56. **Lines 3–4:** Prosecutors in the Office of the Attorney General Ministry of Legal Affairs who specialize in the prosecution of sexual offence cases are also involved in the prosecution of trafficking related cases.

Paragraph 56

57. **Lines 5–6:** In the case that was prosecuted in the Supreme Court, the two victims were made to prostitute themselves. In the case that is being prosecuted in the Magistrates Court, the victim was made to dance in a night club and prostitute herself.

Paragraph 61

58. **Lines 1–2:** The Government informed that at the time of the visit of the Special Rapporteur, two of the three victims were in The Bahamas. The other was repatriated to the country of origin with the help of the IOM.

Paragraph 63

59. The paragraph should be restated as follows:

60. Although there is no institutionalized compensation scheme, the Government informed that the two Dominican males, who were not identified as victims of trafficking in persons, were assisted in their return to their home country and provided with a small stipend from funds earmarked for victims of Trafficking in Persons before their repatriation. There were no cases of labour exploitation in The Bahamas.

H. Prevention

Public Awareness

Paragraph 65

61. **Lines 1–3:** The Trafficking in Persons Inter-Ministry Committee and National Task Force have responsibility for the coordination and implementation of the activities aimed at preventing trafficking in persons.

I. Cooperation and Partnership

Capacity Building

Paragraph 75

62. **Line 1:** The words 'has conducted' should be changed to 'is conducting'.

Paragraph 77

63. **Line 3:** sponsored a Study Tour for them in Miami, Florida.